
REQUEST FOR PROPOSALS

RFP # HHSC FY07-705

FOR COMPETITIVE SEALED PROPOSALS TO PROVIDE:

SOCIAL WORKER SERVICES

for

Samuel Mahelona Memorial Hospital

in the community of

KAPAA, KAUAI, HAWAII

(LEGAL ADVERTISEMENT DATE: August 31, 2006)

**Hawaii Health Systems Corporation
3675 Kilauea Avenue
Honolulu, Hawaii 96816**

AN AGENCY OF THE STATE OF HAWAII

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SECTION 1

ADMINISTRATION

1.1 INTRODUCTION

This Request For Proposal (hereinafter “RFP”) is issued by the Hawaii Health Systems Corporation (HHSC), an Agency of the State of Hawaii. The purpose is to secure social worker services for Samuel Mahelona Memorial Hospital (SMMH).

Thank you for your interest in submitting a proposal for this solicitation. The rationale for this RFP is to promote and ensure the fairest, most efficient means to obtain the benefits of the most qualified responsive and responsible proposal. Hereinafter, organizations interested in submitting a proposal in response to this RFP shall be referred to as “OFFERORS”.

In order for HHSC to evaluate OFFEROR's proposal in a timely manner, please thoroughly read this RFP and follow instructions, as presented.

1.2 RFP ORGANIZATION

This RFP is organized into five sections:

SECTION 1: ADMINISTRATIVE

Provides information regarding administrative requirements.

SECTION 2: SCOPE OF SERVICES

Provides a detailed description of goods and/or services to be provided.

SECTION 3: PROPOSALS

Describes the required format and content for submission of a proposal.

SECTION 4: EVALUATION

Describes how proposals will be evaluated and lists the “value weight percentages” of the evaluation categories.

SECTION 5: AWARD OF CONTRACT

Describes procedures for selection and award of contract.

1.3 HEAD OF THE PURCHASING AGENCY

The Head of the Purchasing Agency (HPA) for HHSC is authorized to execute any and all contracts, resulting from this RFP. The HPA for this RFP is:

Thomas M. Driskill, Jr.
President & Chief Executive Officer
Hawaii Health Systems Corporation

1.4 DESIGNATED OFFICIALS

The Officials identified in the following paragraphs have been designated by the HPA as HHSC's procurement officials responsible for execution of this RFP, award of contract and satisfactory completion of contract requirements.

1.4.1 ISSUING OFFICER

The Issuing Officer is responsible for administering/facilitating all requirements of the RFP solicitation process and is the sole point of contact for OFFERORS from the date of release of the RFP until the selection of the successful OFFEROR. The Issuing Officer will also serve as the Contract Administrator responsible for "contractual actions" throughout the term of the contract. The Issuing Officer is:

David Lane, Ph.D.
Regional Contracts Manager—Kauai
808-338-9468
dlane2@hhsc.org

1.4.2 HOSPITAL TECHNICAL REPRESENTATIVES

The Hospital Technical Representatives have the right but not the duty to oversee the successful completion of contract requirements, including monitoring, coordinating and assessing Contractor performance; and, approving completed work/services with verification of same for Contractor's invoices. Technical Representatives will also serve as Contract Administrators for "technical" matters throughout the term of the contract. Technical representatives for this contract is:

Llewellyn Wynne
Assistant Administrator—Clinical Operating Officer
Samuel Mahelona Memorial Hospital
Kapaa, Hawaii
808-823-4111
lwynne@hhsc.org

1.5 HHSC ORGANIZATIONAL INFORMATION

1.5.1 CHARTER

HHSC is a public body corporate and politic and an instrumentality and agency of the State of Hawaii. HHSC is administratively attached to the Department of Health, State of Hawaii and was created by the legislature with passage of Act 262, Session Laws of the State of Hawaii 1996. Act 262 affirms the state's commitment to provide quality health care for the people in the State of Hawaii, including those served by small rural facilities.

1.5.2 STRUCTURE AND SERVICES

HHSC oversees the operations of 12 public health facilities (11 hospitals and 1 free-standing, long term care facility) throughout the Hawaiian Island chain, including Oahu, Lanai, Maui, Kauai and Hawaii. HHSC is organized into five operational regions and provides a broad range of healthcare services including acute, long term, rural and ambulatory health care services. As the fourth largest public health system in the country, HHSC is the largest provider of healthcare in the Islands, other than on Oahu, and is the only acute care provider on the Islands of Maui and Lanai. In fiscal year 2004, HHSC had approximately 3400 employees, operating 1260 licensed beds, located on five different island, with approximately 23,000 in-patient admissions. This RFP is for seven Critical Access Hospitals (CAHs): West Kauai Medical Center—KVMH, Samuel Mahelona Memorial Hospital (SMMH), Hale Ho'ola Hamakua, Kau Hospital, Kohala Hospital, Kula Hospital, and Lanai Community Hospital.

1.5.3 MISSION

The mission of HHSC is to provide and enhance accessible, comprehensive health care services that are quality-driven, customer-focused and cost-effective.

1.6 FACILITY INFORMATION

Samuel Mahelona Memorial Hospital (SMMH) is the oldest operating hospital on Kauai. Founded in 1917 as a tuberculosis (TB) hospital, it received its name from a member of the Wilcox family who died of TB as a young man. In the 1960's, with the cure from TB well established, SMMH gradually transitioned to providing acute psychiatric, skilled nursing, medical acute, TB, and ancillary outpatient and inpatient services.

This hospital currently employs 131 people and its services continue to develop to meet the changing needs of the community. In the past year, an Emergency Department was opened to provide services to Kauai's east and north shore communities. Currently, patient services include:

Established CAH FY2006

- Emergency Services – 24-hour mid-level emergency services staffed by Board Certified ER physicians and ER nurses. 2,500 estimated annual visits.
- 5 Acute / SNF Beds

Outpatient Services

- Laboratory
- Physical Therapy
- Radiology
- Occupational Therapy

Psychiatric Services (9 Acute Beds; Locked unit)

- Adult Inpatient Psychiatric Care
- Detoxification

Long-Term Care (66 SNF/ICF Beds)

- Skilled Nursing Beds
- Intermediate Care Beds

Tuberculosis Services (6 Acute/SNF Beds)

- Acute Inpatient Beds
- Clinic

Support for all Services

- Inpatient Pharmacy
- Social Services
- Occupational Therapy
- Recreational Therapy
- Speech Therapy
- Physical Therapy
- Dietitian

Other detailed information pertaining to HHSC is located on HHSC's WebSite (www.hhsc.org).

1.7 PROCUREMENT TIMETABLE

The timetable set out herein represents HHSC's best estimate of the schedule that will be followed in the RFP process. If an event of the timetable, such as "Closing Date for Receipt of Proposals" is delayed, the rest of the timetable dates may be shifted by the same number of days. OFFERORS will be advised, by addendum to the RFP, of any changes to the timetable.

| <u>Event</u> | <u>Scheduled Date</u> |
|------------------------------|-----------------------|
| RFP Public Announcement..... | August 31, 2006 |
| RFP Issued | August 31, 2006 |

| | |
|--|-----------------------|
| Closing Date for Receipt of Questions | September 11, 2006 |
| HHSC Response to OFFERORS Questions..... | September 18, 2006 |
| Closing Date for Receipt of Proposals | September 29, 2006 |
| Mandatory Requirements Evaluation | September 29-30, 2006 |
| Proposal Evaluations | October 2-6, 2006 |
| Proposal Negotiations (optional) | October 6-10, 2006 |
| Best and Final Offers (optional)..... | October 10-12, 2006 |
| Contractor Selection/Award Notification (on/about) | October 12, 2006 |
| Contract Execution Period | October 13-20 |
| Contract Tentative Commencement Date..... | October 23, 2006 |

1.8 SUBMISSION OF QUESTIONS

OFFERORS are encouraged to submit written questions pertaining to the RFP. Impromptu (un-written questions) are permitted and verbal answers will be provided during pre-proposal conferences, on-site visits, and other occasions, but are only intended as general direction and will not represent official HHSC position.

Questions must be submitted in writing via hand-delivery, electronic mail, facsimile or post mail to the Issuing Officer during the pre-proposal conference or not later than the "Closing Date For Receipt of Questions", identified in paragraph 1.7, above, in order to generate an official answer. All written questions will receive an official written response from HHSC and become addendums to the RFP. The only official position of HHSC is that which is stated in writing and issued in the RFP as addendums thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response/statement and may not be relied upon.

1.9 SOLICITATION REVIEW

OFFERORS should carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter must be made in writing and should be received by the Issuing Officer not later than the "Closing Date For Receipt of Questions", identified in paragraph 1.7, above. This will allow issuance of any necessary amendments to the RFP. It will also assist in preventing the opening of proposals upon which award may not be made due to a defective solicitation package.

1.10 RFP AMENDMENTS

HHSC reserves the right to amend the RFP any time prior to the ending date for "Proposal Negotiations", identified in paragraph 1.7, above.

1.11 CANCELLATION OF RFP

The RFP may be canceled when it is determined to be in the best interests of HHSC.

1.12 PROTESTS

A protest based upon the content of the solicitation shall be submitted in writing within five (5) working days after the aggrieved individual/business knows or should have known of the facts giving rise thereto; provided further that the protest shall not be considered unless it is submitted in writing prior to, but not later than, the "Closing Date For Receipt of Proposals", identified in paragraph 1.7, above.

A protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract. The notice of award letter, if any, resulting from this solicitation shall be posted on the bulletin board of HHSC's Finance Cottage, 3628 Kilauea Avenue, Honolulu, Hawaii 96816.

Any and all protests shall be submitted in writing to the HPA, as follows:

THOMAS M. DRISKILL, JR.
Head of the Purchasing Agency
Hawaii Health Systems Corporation
3675 Kilauea Avenue
Honolulu, Hawaii 96816

SECTION 2

SCOPE OF SERVICES

2.1 INTRODUCTION

The purpose of this RFP is to award either a single or multiple contracts for “**Social Worker Services**”:

The OFFEROR awarded a contract under this RFP shall be referred to as “CONTRACTOR” and responsible to perform “Scope of Services” requirements of paragraph 2.3, below for the HOSPITAL(S) awarded.

2.2 CONTRACT “TIME OF PERFORMANCE”

The “time of performance” of contract will be for two (2) years, commencing on/about October 16. The term of the contract may be extended for three (3) years, at negotiated costs, subject to mutual written agreement between HHSC and the CONTRACTOR thirty (30) days prior to the end of the current contract period. A Supplemental Agreement shall be executed by the CONTRACTOR and HHSC to exercise any and all extensions.

2.3 SCOPE OF SERVICES

The following scopes of services are provided:

CONTRACTOR is to provide social worker with MSW from an accredited school and at least one year of social work experience to provide leadership, management, and supervisory functions for the Social Service Department at the Hospital. Two years of social work experience in a health care setting working directly with individuals preferred.

The CONTRACTOR shall:

- Ensure department provides crisis intervention, individual and family therapy, and comprehensive care management for individual patients/residents;
- Lead referral and admission process for new referrals to maximize optimal use of bed capacity;
- Direct the social services department;
- Develop and implement programs, training and supervises staff;
- Provide required social service to patients of the Acute Psychiatric Unity, Emergency Department and Acute/Swing Bed Units;
- Assists with social work coverage to residents of the SMMH Long Term Care Unit as needed;
- Ensure department compliance with State and Federal guidelines.

CONTRACTOR may be assigned to work at other facilities in the Kauai Region and reports to the Assistant Administrator—Clinical Operations Officer.

SECTION 3

PROPOSALS

3.1 INTRODUCTION

One of the objectives of the RFP is to make proposal preparation easy and efficient, while giving OFFERORS ample opportunity to highlight their proposal. When an OFFEROR submits a proposal, it shall be considered a complete plan for accomplishing the requirements described in this RFP.

3.2 PROPOSAL PREPARATION

OFFEROR shall prepare a written proposal in accordance with requirements of this SECTION. Proposals shall address and contain, at a minimum:

- Proposal Transmittal Cover Letter identified in paragraph 3.6, below.
- The technical category information identified in paragraph 3.8, below.
- The cost category information identified in paragraph 3.9, below.
- The original or a certified copy of the following documents:
 - "Tax Clearance Certificate" from the Hawaii State Department of Taxation and the Internal Revenue Service. Refer to paragraph 5.4.2.C., SECTION 5 of the RFP.
 - "Certificate of Compliance" from the Hawaii State Department of Labor and Industrial Relations. Refer to paragraph 5.4.3., SECTION 5 of the RFP.
 - "Certificate of Good Standing" from the Department of Commerce and Consumer Affairs Business Registration Division. Refer to paragraph 5.4.4., SECTION 5 of the RFP.
- Proposal Submission Checklist identified in paragraph 3.13, below and included in APPENDIX B.

OFFERORS must submit all data and information specified above to qualify proposals for evaluation and consideration for award. Non-compliance may be deemed sufficient cause for disqualification of a proposal.

Prepare proposals in a three-ring binder, organized into distinctive sections, with tabs corresponding with the technical, cost and other categories, as appropriate. The development of overly elaborate proposals and presentation material, not required and/or related to RFP requirements, is **HIGHLY DISCOURAGED**. This procedure will facilitate proposal evaluations.

3.3 COSTS FOR PROPOSAL PREPARATION

Any and all costs incurred in the development of proposals, i.e. preparing and submitting, on-site visits, pre-proposal conference attendance, travel and lodging, etc. shall be the sole responsibility of OFFEROR.

3.4 DISQUALIFICATION OF PROPOSALS

HHSC reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in the RFP and which demonstrate an understanding of the scope of services. **Any proposal offering any other set of terms and conditions contradictory to those included in the RFP may be disqualified without further notice.** HHSC reserves the right to ask for clarification of any item in the proposal.

An OFFEROR will be disqualified and the proposal automatically rejected for any one or more of the following reasons:

- Proof of collusion among OFFERORS, in which case all proposals involved in the collusive action will be rejected.
- The OFFERORS lack of responsibility and cooperation as shown by past work or services.
- The proposal shows any noncompliance with applicable law.
- The proposal is conditional, incomplete, or irregular in such a way as to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- The proposal has any provision reserving the right to accept or reject award, or to enter into a contract pursuant to an award, or provisions contrary to those required in the solicitation.
- Proof of exclusion from participation in federal health care programs, as defined in the Social Security Act (section 1128 and 1128A), and other federal laws and regulations relating to health care.

3.5 SUBMISSION OF PROPOSALS

Each OFFEROR may submit only one (1) written proposal (which includes in part, a technical proposal and a cost proposal). Alternate proposals will not be accepted. The Issuing Officer must receive one (1) original and one (1) electronic copy of the proposal no later than 4:00pm, HST, on the "Closing Date For Receipt of Proposals", identified in paragraph 1.7 of SECTION 1. **Proposals received after this time/date may be rejected.** Mail or deliver proposals to the following address:

David Lane, Ph.D.
Issuing Officer, RFP # HHSC FY07-705
Hawaii Health Systems Corporation
P.O. Box 337
Waimea, HI 96796
Dlane2@hhsc.org

The outside cover of the package containing the proposal should be noticeably marked, as follows:

Proposal Submitted in Response to: RFP # HHSC FY07-705

3.6 PROPOSAL TRANSMITTAL COVER LETTER

OFFERORS are required to submit proposals with a "transmittal cover letter". The transmittal cover letter must be on the OFFERORS official business letterhead; signed by an individual authorized to legally bind the OFFEROR; affixed with the corporate seal or notarized; and minimally include information, as written/requested, on the "sample" letter in APPENDIX A. The transmittal cover letter must attest to the fact that the Hawaii State Compliance documents (Tax Clearance Certificate, Compliance Certificate, and Certificate of Good Standing) identified in sections 5.4.2 (C), 5.4.3, and 5.4.4 respectively have been received or have been applied for using Hawaii Compliance Express, identified in section 5.4.5 below.

3.7 PUBLIC INSPECTION

Proposals shall not be opened publicly, but shall be opened in the presence of two or more procurement officials. The register of proposals and OFFERORS proposals shall be open to public inspection after the contract is executed by all parties.

OFFERORS shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. HHSC cannot guarantee that designated data will be kept confidential. The proposals are subject to disclosure rules set forth in Chapter 92F, H.R.S. The OFFEROR bears the burden of establishing that the designated data is exempted from the disclosure requirements set forth in chapter 92F.

All proposals and other material submitted by OFFERORS become the property of HHSC and may be returned only at HHSC's option.

3.8 TECHNICAL PROPOSAL

The technical proposal shall include the following categories:

- SUMMARY
- BACKGROUND, QUALIFICATIONS AND EXPERIENCE
- PERSONNEL ORGANIZATION AND STAFFING
- QUALITY ASSURANCE
- TECHNICAL APPROACH

3.8.1 SUMMARY

Clearly, concisely and briefly summarize and highlight the contents of the technical proposal in such a way to provide HHSC with a broad understanding and the unique, most promising aspects of the proposal.

3.8.2 BACKGROUND, QUALIFICATIONS AND EXPERIENCE

Provide explicit details on Company's background, qualifications and experience relative to performing requirements set forth in the "Scope of Services", including but not limited to:

- A. Background of the Company, i.e. services offered, size, resources, years in business, location, State of Hawaii presence, State of incorporation, etc.
- B. Brief description of Company's qualifications to perform "Scope of Services" requirements.
- C. Brief description of three (3) past and/or present contracts demonstrating Company's qualifications, experience and performance. Include customer name, contact name and telephone number. If not available, provide contact name and telephone number of three (3) references that can discuss your Company's qualifications, experience and performance.
- D. Describe and provide the Company's billing and collections history and working relationship with any Hawaii insurance Companies for the past 3 years, including but not limited to:
 - 1. Days in account receivable.
 - 2. Policy for sending client bills to collection agencies.
- E. Copies of licensure within the State of Hawaii and other States.
- F. Company financial statements for the past two years, preferably audited, or a copy of filed tax returns. Balance & Income Statements are acceptable; keep documentation simple/limited. If not available or applicable, please explain reason(s) why.
- G. Identification of litigation currently impacting the Company, if any. State "NONE", if none.

3.8.3 PERSONNEL ORGANIZATION AND STAFFING

Provide explicit details on the Company's personnel organization and staffing relative to performing requirements set forth in the "Scope of Services", including but not limited to:

- A. Company's Managerial organizational chart and resumes of key positions.
- B. Personnel identified/available to perform services, including: name, years of experience, years with the Company, qualifications, and Curriculum Vitaes.

3.8.5 TECHNICAL APPROACH

Provide technical information/plans relative to performing requirements set forth in the "Scope of Services."

3.9 COST PROPOSAL

The cost proposal shall include the following categories:

- SUMMARY
- DIRECT COSTS
- INDIRECT COSTS
- SUMMARY OFFER

3.9.1 SUMMARY

Clearly, concisely and briefly summarize the contents of the proposal, in such a way, to provide HHSC with a broad understanding of the proposal.

3.9.2 DIRECT COSTS

Direct costs is defined as "personnel compensation/fee" of any and all individuals directly performing "Scope of Service" requirements of this RFP.

Provide a detailed breakdown and summary total of direct costs. All worksheets and supportive documentation, in determining direct costs, shall be provided to enable HHSC evaluators to verify validity of computations and determine if costs are fair & reasonable.

3.9.3 INDIRECT COSTS

Indirect costs is defined as "any and all other costs" to perform "Scope of Service" requirements of this RFP. For example, indirect costs may include costs for: transportation/travel, equipment, supplies, administration, taxes, insurance, lodging/housing, profit, etc.

Provide a detailed breakdown and summary total of indirect costs. All worksheets and supportive documentation, in determining indirect costs, shall be provided to enable HHSC evaluators to verify validity of computations and determine if costs are fair & reasonable.

3.9.4 SUMMARY OFFER

Provide a summary total of the dollar amount offered to perform "Scope of Service" requirements of this RFP (sum of paragraphs 3.9.2 & 3.9.3, above).

The "Summary Offer" shall represent the total amount offered and if proposal is accepted, the "not to exceed" maximum payment amount to be specified in the contract document; excluding "optional services" costs of paragraph 3.10, below, and/or revised costs resulting from subsequent cost changes, negotiations, etc, if any.

3.10 OFFEROR OPTIONAL SERVICES

OFFEROR optional services are defined as services and/or goods proposed (by OFFERORS) that are not included in the "Scope of Services" of the RFP and would be considered enhancements, thereof. Costs for OFFEROR optional services, selected by HHSC, will be added to the total amount of the Agreement (Contract) or be included in the contract as an optional service item to be exercised by HHSC, if and when elected.

Provide brief description and detailed costs for optional services proposed. If none, state NONE. All worksheets and supportive documentation, in determining costs for optional services, shall be provided to enable HHSC evaluators to verify validity of computations and determine if costs are fair & reasonable.

3.11 NON APPLICABLE PROPOSAL REQUIREMENT

If any proposal requirement, as describe in this SECTION, is not applicable to the OFFEROR and therefore will/can not be provided, list the requirement(s) and provide detailed explanation of the reasons why the requirement(s) is not applicable. If none, state NONE. HHSC reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in this SECTION.

3.12 NON ACCEPTANCE OF ANY RFP REQUIREMENT

If any RFP requirement, as describe in this RFP, is not acceptable to the OFFEROR, list the requirement(s) and provide detailed explanation of the reasons why the requirement(s) is not acceptable and provide a recommended revision, if applicable. If none, state NONE. HHSC reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in the RFP.

3.13 PROPOSAL SUBMISSION CHECKLIST

The proposal submission checklist is designed to be used as a tool to ensure that all required documents/information is being submitted with OFFERORS proposal. The checklist is required to be completed by each OFFEROR and included (as the last document) in the proposal package. The proposal submission checklist is in APPENDIX B.

SECTION 4

EVALUATIONS

4.1 INTRODUCTION

The evaluation of proposals will be conducted comprehensively, fairly, and impartially. Structural, quantitative scoring techniques will be utilized to maximize the objectivity of the evaluation.

4.2 PROPOSAL EVALUATION COMMITTEE

An evaluation committee shall be designated by HHSC to perform all evaluation requirements. The committee will be composed of individuals with experience in, knowledge of, and program responsibility for the requirements identified in the RFP. HHSC reserves the right to request information (from OFFERORS) to clarify the OFFERORS proposal.

4.3 EVALUATION PHASES

Evaluation phases will be conducted as follows:

- Phase 1.....Evaluation of Mandatory Requirements
- Phase 2.....Technical Proposal Evaluation
- Phase 3.....Cost Proposal Evaluation
- Phase 4.....Proposal Negotiations (optional)
- Phase 5.....Best and Final Offers (optional)
- Phase 6.....Recommendation for Contract Award

4.3.1 PHASE 1--EVALUATION OF MANDATORY REQUIREMENTS

The evaluation of the mandatory requirements, as listed below, shall be based upon a "pass/no pass" basis. The purpose of this phase is to determine whether an OFFERORS proposal is sufficiently responsible and responsive to RFP requirements to permit a complete evaluation, i.e. responsible in terms of "Does the OFFEROR have the capability to perform fully the "Scope of Services" requirements; and responsive in terms of "Were proposal documents, as identified below, received and contain the required information"? Failure to meet any mandatory requirement ("no pass") will be grounds for deeming the proposal non-responsible, non-responsive or both and disqualification thereof.

Proposal “**Mandatory Requirements**”:

- Proposal Cover Letter
- Technical Proposal
 - Summary
 - Background, Qualifications and Experience
 - Personnel Organization and Staffing
 - Quality Assurance
 - Technical Approach
- Cost Proposal
 - Summary
 - Direct Costs
 - Indirect Costs
 - Summary Offer
- Documentation
 - Tax Clearance Certificate
 - Certificate of Compliance
 - Certificate of Good Standing
- Proposal Submission Checklist

4.3.2 PHASE 2--TECHNICAL PROPOSAL EVALUATION

Evaluation of OFFERORS technical proposal shall be conducted using the technical proposal categories and the value weight percentages identified in paragraph 4.4; and, the evaluation scoring system identified in paragraph 4.5.

4.3.3 PHASE 3---COST PROPOSAL EVALUATION

Evaluation of OFFERORS cost proposal shall be conducted using the cost proposal category and the value weight percentages identified in paragraph 4.4; and, the evaluation scoring system identified in paragraph 4.5.

4.3.4 PHASE 4--PROPOSAL NEGOTIATIONS (OPTIONAL)

HHSC may conduct negotiations with OFFERORS. OFFERORS proposals may be accepted without negotiations. HHSC shall inform OFFERORS of specific negotiation topics and issues; and, schedule negotiations proceedings.

4.3.5 PHASE 5--BEST AND FINAL OFFERS (OPTIONAL)

OFFERORS may be requested to submit a “Best and Final” offer. “Best and Final” offers shall be evaluated and “scoring” of the OFFERORS proposal adjusted, accordingly. If a “Best and Final” offer is requested but not submitted, the previous submittal shall be construed as the “Best and Final” offer.

4.3.6 PHASE 6--RECOMMENDATION FOR CONTRACT AWARD

The Evaluation Committee shall prepare a report summarizing proposal evaluation findings/rankings and provide recommendation for award of contract to the HPA.

4.4 EVALUATION CATEGORIES AND VALUE WEIGHT PERCENTAGES

| | |
|---|---------------------|
| ○ Mandatory Requirements | Pass/No Pass |
| ○ Technical Proposal | <u>Value Weight</u> |
| ○ Background, Qualifications and Experience | 10% |
| ○ Personnel Organization and Staffing..... | 40% |
| ○ Technical Approach..... | 20% |
| ○ Cost Proposal..... | 30% |
| TOTAL..... | 100% |

4.5 EVALUATION SCORING SYSTEM

The maximum number of points available for scoring is one thousand (1000) per evaluator. The proposal receiving the highest number of points is considered statistically the best proposal and the best value to HHSC; and, will be recommended for award of contract, unless otherwise determined and justified by the evaluation committee.

The evaluation categories are assigned a value weight percentage, as determined by HHSC, totaling 100%. Each category will be rated between one (1) and ten (10), with ten being the highest (the best rating) by each member of the evaluation committee. The OFFERORS total score (see note below) will be determined by: a) multiplying the assigned weight value of each category by the numerical rating provided by the evaluation committee member to determine the score for each category; b) totaling the score for all categories of each evaluation committee member; and, c) totaling the score of all evaluators.

Note: In determining the total score, the OFFERORS cost proposal with the lowest costs will receive the highest available rating allocated to costs. Each proposal that has a higher cost than the lowest will have a lower rating for costs. The points allocated to higher-priced proposals will be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price.

SECTION 5

AWARD OF CONTRACT

5.1 AWARD OF CONTRACT

Award of contract shall be made to the most responsible and responsive OFFEROR whose proposal is judged/determined, by the Evaluation Committee, to provide the best value to HHSC, considering all evaluation reviews and results.

5.2 CONTRACT AWARD NOTIFICATION

The Issuing Officer will inform the successful OFFEROR of contract award selection within 48 hours of confirmation, thereof. Additionally, an official "notice of award" letter will be provided to the successful OFFEROR; and, a "notice of non-award" letter shall be provided to all un-successful OFFERORS, at the earliest date.

The notice of award letter, if any, resulting from this solicitation shall be posted on the State of Hawaii State Procurement's website www.hawaii.gov/spo.

5.3 CONTRACT AWARD DEBRIEFING

If requested, HHSC shall provide a contract award debriefing. The purpose of a debriefing is to inform the non-selected OFFERORS of the basis for the source selection decision and contract award. A written request to the issuing officer for a debriefing shall be made within three (3) working days after receipt of non-award of contract letter from HHSC and/or posting of the award of the contract.

5.4 METHOD OF AWARD

5.4.1 CONTRACT DOCUMENT

The contract will be awarded by executing an **"Agreement for Goods or Services Based Upon Competitive Sealed Proposals"** (hereinafter "CONTRACT") by HHSC and the successful OFFEROR (hereinafter "CONTRACTOR"). This document will serve as the official, legal contractual instrument between both parties. This document will incorporate (by attachments or reference) the RFP, with any and all addendums; GENERAL CONDITIONS and any SPECIAL CONDITIONS; and, the OFFEROR's accepted proposal, with any and all addendums, changes, negotiated agreements, etc; all of which becomes part and whole of the CONTRACT.

A "sample" CONTRACT is at APPENDIX C. **Do not complete or execute the "sample" CONTRACT.**

5.4.2 GENERAL CONDITIONS

The **GENERAL CONDITIONS** (APPENDIX D) is applicable and shall be part and whole and attached to the CONTRACT. HHSC reserves the right to add terms and conditions during contract negotiations, if conducted. Additional terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

Of particular significance, please note/review the following conditions:

A. INSURANCE LIABILITY

CONTRACTOR shall maintain insurance acceptable to HHSC in full force and effect throughout the term of the contract. The policy or policies of insurance maintained by the CONTRACTOR shall provide the following coverage(s) and limit(s):

| <u>Coverage</u> | <u>Limits</u> |
|------------------------------------|--|
| Professional and General Liability | \$1,000,000.00 per occurrence, per physician; \$3,000,000.00 in the aggregate, per physician. |

B. GENERAL EXCISE/USE TAX

Refer to paragraph 2.e of the GENERAL CONDITIONS. Work to be performed under this solicitation is a business activity taxable under Chapter 237, Hawaii Revised Statutes (HRS), and Chapter 238, HRS, where applicable. Both out-of-state and Hawaii contractors are advised that the gross receipts derived from this solicitation are subject to the general excise tax imposed by Chapter 237, HRS, and where applicable to tangible property imported into the State of Hawaii for resale, subject to the use tax imposed by Chapter 28, HRS.

Pursuant to Section 237-9, HRS, the CONTRACTOR is required to obtain and/or possess a valid General Excise Tax License from the Hawaii State Department of Taxation (DOTAX) prior to executing a contractual agreement with a State Agency (reference paragraph 2.e. of the GENERAL CONDITIONS).

The General Excise Tax License shall be obtained from the DOTAX offices in the State of Hawaii or the DOTAX WebSite and by mail or FAX. Refer to the next paragraph for procedures in obtaining DOTAX forms and information.

C. TAX CLEARANCE CERTIFICATE

Pursuant to § 103D-328, HRS, the CONTRACTOR is required to obtain/posses a Tax Clearance Certificate issued by the Hawaii State Department of Taxation and the Internal Revenue Service (IRS) prior to executing a contractual agreement with a State Agency (reference paragraph 2.e. of the GENERAL CONDITIONS). The certificate is

valid for six (6) months from the most recent approval stamp date on the certificate and must be valid on the date it is received by HHSC.

The Tax Clearance Certificate shall be obtained on the State of Hawaii, DOTAX, TAX CLEARANCE APPLICATION Form A-6 which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX WebSite and by mail or FAX. Form A-6 is the responsibility of the CONTRACTOR and must be submitted directly to the DOTAX and not to HHSC.

DOTAX WebSite: (www.state.hi.us/tax/tax.html). Open "Forms" on the navigate sidebar and open "alphabetical Listing of Tax Forms

DOTAX forms by FAX/Mail: 808 587-7572

1 800 222-7572

DOTAX forms by FAX:

(on Oahu) 808 587-7572

(outside of Oahu) 808 678-0522

5.4.3 CERTIFICATE OF COMPLIANCE

Pursuant to § 103D-310(c), HRS, the CONTRACTOR is required to obtain/posses a valid Certificate of Compliance from the Hawaii State Department of Labor and Industrial Relations (DLIR) prior to executing a contractual agreement with a State Agency. The certificate is valid for six months from the date of issue and must be valid on the date it is received by HHSC.

The Certificate of Compliance shall be obtained on the State of Hawaii, DLIR APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR, Form LIR #27, which is available at www.hawaii.gov/labor (open "Get a Form"; open "LIR#27) or at the neighbor island DLIR District Offices. The application for the certificate is the responsibility of the OFFEROR and must be submitted directly to the DLIR and not to HHSC. The DLIR will return the form to the CONTRACTOR who in turn shall submit the form to HHSC.

5.4.4 CERTIFICATE OF GOOD STANDING

HAWAII BUSINESS. A business entity referred to as a "Hawaii Business", is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, the CONTRACTOR shall obtain/posses a Certificate of Good Standing issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG). A "Hawaii Business" that is a sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate. A CONTRACTOR's status as sole proprietor and its business street address as indicated on the proposal transmittal cover letter (APPENDIX A) will be used to confirm that the CONTRACTOR is a Hawaii Business.

COMPLIANT NON-HAWAII BUSINESS. A business entity referred to as a "Compliant Non-Hawaii Business" is not incorporated or organized under the laws of the State of

Hawaii but is registered to do business in the State. As evidence of compliance, the CONTRACTOR shall obtain/posses a Certificate of Good Standing issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG).

The Certificate of Good Standing can be obtained by phone (call 808 586-2727, M-F 7:45---4:30 HST) or by mail (Department of Commerce and Consumer Affairs, Business Registration Division, POBox 40, Honolulu, Hawaii 96810). The certificate is valid for six months from date of issue and must be valid on the date it is received by HHSC.

5.4.5. HAWAII COMPLIANCE EXPRESS

To facilitate the obtaining of the three State of Hawaii Compliance documents: 1) Tax Clearance certificate; 2) Certificate of Compliance, and; 3) Certificate of Good Standing, businesses may register and use Hawaii Compliance Express online services at www.vendors/ehawaii.gov. Any fees associated with the use of this service are the responsibility of the successful Offeror.

5.4.6 CONTRACT EXECUTION

Upon receipt of the CONTRACT document, the CONTRACTOR shall have ten (10) business days to execute and return the CONTRACT to the Issuing Officer. Explicit execution instructions will accompany the CONTRACT. A copy of the fully executed CONTRACT will be provided the CONTRACTOR within seven (7) business days of CONTRACT execution.

Award of CONTRACT may be withdrawn if the CONTRACTOR is unable to meet CONTRACT execution requirements.

5.5 CONTRACT COMMENCEMENT DATE

Upon completion of CONTRACT execution requirements, a **"Notice to Proceed"** letter will be provided the CONTRACTOR specifying the "Commencement" (start work) date of the CONTRACT. No work is to be undertaken by the CONTRACTOR prior to the commencement date specified in the Notice to Proceed letter. HHSC is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the CONTRACTOR prior to the official, notice to proceed "Commencement" date.

5.6 ADDITIONAL SERVICES

During the course of the CONTRACT, the CONTRACTOR may be requested to perform additional services, not identified under the "Scope of Services". The services will be within the "general scope" of the basic CONTRACT.

If additional services are required, HHSC's Contract Administrator will provide the CONTRACTOR a written description of the services and request CONTRACTOR's review and acceptance. If accepted, the CONTRACTOR shall submit an acceptance letter including a detailed cost proposal (a firm-fix price quote) to perform the services. The cost proposal will be subject to negotiations, as necessary, to determine and mutually agree upon a fair and reasonable price for the performance of the additional services.

The CONTRACTOR will not commence performance of additional services until a Supplemental Agreement (contract amendment) is executed.

APPENDIX A

SAMPLE **PROPOSAL TRANSMITTAL COVER LETTER**

David Lane, Ph.D.
Issuing Officer, RFP # HHSC FY06-704
Hawaii Health Systems Corporation—Kauai Region
P.O. Box 337
Waimea, Hawaii 96796

Dr. Lane:

_____(Name of Business)_____ proposes to provide any and all goods and services as set forth in the "Request for Proposals for Competitive Sealed Proposals" to provide "Emergency Department Physician Services", **RFP # HHSC FY05-011**, for which fees/costs have been set. The fees/costs offered herein shall apply for _____(insert applicable period of time)_____.

It is understood and agreed that _____Name of Business_____ have read HHSC's Scope of Services described in the RFP and that this proposal is made in accordance with the provisions of such Scope of Services. By signing this proposal, _____(Name of Business)_____ guarantee and certify that all items included in this proposal meet or exceed any and all such Scope of Services. It is further understood that all Hawaii Compliance documents are ready and current or have been applied to through Hawaii Compliance Express.

_____(Name of Business)_____ agree, if awarded the contract, to provide the goods and services set forth in the RFP; and comply with all terms and conditions indicated in the RFP; and at the fees/costs set forth in this proposal. The following individual(s) may be contacted regarding this proposal:

Other information:

- Business telephone #: _____ Federal Tax ID #: _____
- Facsimile #: _____ Hawaii GET Lic ID #: _____
- E-mail address: _____

_____(Name of Business)_____ is a: ___Sole Proprietor___ Partnership ___Corporation___ Joint Venture
Other _____(Specify)_____

State of Incorporation is: ___Hawaii___ Other _____(Specify)_____

The exact legal name of the business under which the contract, if awarded, shall be executed is:

_____.

(Authorized Bidder's Signature, Printed Name/Title; Corporate Seal or Notarized)

Encl: Proposal

APPENDIX B

PROPOSAL SUBMISSION CHECKLIST

***Please
Check Off
Items
Submitted For
 HHSC Use**

| | | |
|--------------------------|--------------------------|--|
| | <input type="checkbox"/> | Proposal Received "On-Time" |
| <input type="checkbox"/> | <input type="checkbox"/> | One Original & five (5) Copies of Proposals |
| <input type="checkbox"/> | <input type="checkbox"/> | Proposal Transmittal Cover Letter: |
| <input type="checkbox"/> | <input type="checkbox"/> | Official Business Letterhead |
| <input type="checkbox"/> | <input type="checkbox"/> | Authorized Signature |
| <input type="checkbox"/> | <input type="checkbox"/> | Corporate Seal or Notarized |
| <input type="checkbox"/> | <input type="checkbox"/> | Required Information |
| <input type="checkbox"/> | <input type="checkbox"/> | Technical Proposal |
| <input type="checkbox"/> | <input type="checkbox"/> | Background, Qualifications and Experience |
| <input type="checkbox"/> | <input type="checkbox"/> | Personnel Organization and Staffing |
| <input type="checkbox"/> | <input type="checkbox"/> | Technical Approach |
| <input type="checkbox"/> | <input type="checkbox"/> | Cost Proposal |
| <input type="checkbox"/> | <input type="checkbox"/> | Summary |
| <input type="checkbox"/> | <input type="checkbox"/> | Direct Costs |
| <input type="checkbox"/> | <input type="checkbox"/> | Indirect Costs |
| <input type="checkbox"/> | <input type="checkbox"/> | Summary Offer |
| <input type="checkbox"/> | <input type="checkbox"/> | Optional Services Costs |
| <input type="checkbox"/> | <input type="checkbox"/> | Documentation |
| <input type="checkbox"/> | <input type="checkbox"/> | Tax Clearance Certificate |
| <input type="checkbox"/> | <input type="checkbox"/> | Certificate of Compliance |
| <input type="checkbox"/> | <input type="checkbox"/> | Certificate of Good Standing |
| <input type="checkbox"/> | <input type="checkbox"/> | Non Applicable Proposal Requirement(s) |
| <input type="checkbox"/> | <input type="checkbox"/> | Non Acceptance of "Scope of Services" Requirement(s) |
| <input type="checkbox"/> | <input type="checkbox"/> | All Data and Information Required of the RFP |
| <input type="checkbox"/> | <input type="checkbox"/> | Proprietary Documents |
| <input type="checkbox"/> | <input type="checkbox"/> | Others (List) |
| <input type="checkbox"/> | <input type="checkbox"/> | Proposal Submission Checklist |

***IF SPECIFIC ITEM(S) ARE NOT APPLICABLE, MARK WITH "N/A"---DO NOT LEAVE BLANK.**

APPENDIX C

SAMPLE

HAWAII HEALTH SYSTEMS CORPORATION AGREEMENT FOR GOODS OR SERVICES BASED UPON COMPETITIVE SEALED PROPOSALS

AGREEMENT #: FYXX-XXX

THIS AGREEMENT, executed on the respective dates of the signatures of the parties shown hereafter, is effective as of _____, between Hawaii Health Systems Corporation, an Agency of the State of Hawaii (hereinafter "HHSC"), by its Chief Executive Officer (hereinafter "CEO"), whose address is 3675 Kilauea Avenue, Honolulu, Hawaii 96816, and _____, (hereinafter "CONTRACTOR"), a _____, under the laws of the State of _____ whose business address and taxpayer identification number are as follows: _____
_____.

RECITALS

A. The HHSC is in need of the goods or services, or both, described in this Agreement and its attachments.

B. The HHSC has issued a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.

C. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the HHSC, taking into consideration price and the evaluation factors set forth in the request.

D. The HHSC desires to retain and engage the CONTRACTOR to provide the goods or services, or both, as the case may be, and the CONTRACTOR is agreeable to providing said goods or services, or both.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the HHSC and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the HHSC, provide all the services set forth in the request for competitive sealed proposals, **RFP # HHSC FYXX-XXX** ("REQUEST"), and the CONTRACTOR's accepted proposal, including any and all revisions/addendum's/negotiated agreements thereto (collectively "PROPOSAL"), both of which, even if not physically attached to this Agreement, are hereby made a part of this Agreement.

2. Time of Performance. The performance required of the CONTRACTOR under this Agreement shall be executed in accordance with the time period set forth in the _____ REQUEST.

3. Compensation. The CONTRACTOR shall be compensated for
goods

supplied or services performed, or both, under this Agreement, in accordance with the FEE stated in the PROPOSAL; and, at a total amount not to exceed _____
_____ DOLLARS (\$_____), including taxes and expenses incurred.

4. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR, is attached and is made a part of this Agreement.

5. Other Terms and Conditions. The General Conditions and any Special Conditions are attached hereto and made a part of this Agreement (or, Any Special Conditions are attached hereto and made a part of this Agreement). In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) Agreement, including all attachments and addenda; (2) Request, including all attachments and addenda; and (3) Proposal.

6. Notices. Any written notice required to be given by any party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice required to be given to the CEO shall be sent to: HHSC, President & Chief Executive Officer, HHSC, 3675 Kilauea Avenue, Honolulu, Hawaii 96816. Notice to the "head of the purchasing agency" and/or "Agency Procurement Officer" as denoted in the General Conditions shall be sent to: HHSC, Attn: Procurement Office, 3675 Kilauea Avenue, Honolulu, Hawaii 96816. Notice to the CONTRACTOR shall be sent to the CONTRACTOR's address as indicated in this Agreement. A notice shall be deemed to have been received three (3) days after

mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the HHSC in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Agreement by their signatures, on the dates below, to be effective as of the date first above written.

HHSC

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

***CONTRACTOR**

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

*** Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.**

CONTRACTOR'S ACKNOWLEDGMENT

State of _____

County of _____ City of _____

On this _____ day of _____, 200__, before me personally appeared

_____, to me personally known, who being by me duly sworn, did say that he/she is the _____ of _____, the CONTRACTOR named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he/she executed said instrument as the free act and deed of the CONTRACTOR.

NOTARY PUBLIC:

SIGNATURE: _____

PRINTED NAME: _____

COMMISSION EXPIRES: _____

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

I certify that the services to be provided under this Agreement by the CONTRACTOR may be performed concurrently with the CONTRACTOR's private business or profession or other private employment, and that it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State or HHSC. Pursuant to section 76-16(15), Hawaii Revised Statutes, the services are exempt from the state civil service.

Date: _____
Thomas M. Driskill, Jr.
President & Chief Executive Officer
Hawaii Health Systems Corporation

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty percent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State or HHSC, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges.

On behalf of _____, CONTRACTOR, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.*

2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.

3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a State or HHSC employee or, in the case of the Legislature, by a legislator.

4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the State or HHSC within the preceding two (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.

5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been a State or HHSC employee, or in the case of the Legislature, a legislator.

6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, 1) within the past twelve (12) months, served as a State or HHSC employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

CONTRACTOR understands that the Agreement to which this document is attached is voidable on behalf of the State or HHSC if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the State or HHSC.

CONTRACTOR

By: _____

Title: _____

Date: _____

*Reminder to FACILITY: if "is" is circled, YOUR FACILITY is required, under section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, ten (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

ATTACHMENT 1

SCOPE OF SERVICES

ATTACHMENT 2

TIME OF PERFORMANCE

ATTACHMENT 3

COMPENSATION

APPENDIX D

GENERAL CONDITIONS **(NON PHYSICIAN HEALTHCARE SERVICES)**

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GENERAL CONDITIONS

1. COORDINATION OF SERVICES BY THE HHSC.

The "head of the purchasing agency," (which term includes the designee of the head of the purchasing agency), shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Agreement. The CONTRACTOR shall maintain communications with the head of the purchasing agency at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Agreement. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized to enter into contracts for the procurement of services.

2. RELATIONSHIP OF PARTIES: INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.

a. In the performance of services required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the HHSC shall have a general right to inspect work in progress to determine whether, in the HHSC's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. Unless otherwise provided by special condition, it is understood that the HHSC does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the HHSC.

b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of the HHSC or the State of Hawaii ("State") for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the HHSC or the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to HHSC or State employees.

c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.

d. The CONTRACTOR shall be responsible for payment of all applicable federal, State, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.

e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR have been paid and submit the same to the HHSC prior to commencing any performance under this Agreement. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under section 103-53, HRS, and paragraph 14 of these General Conditions.

f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

3. PERSONNEL REQUIREMENTS.

a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.

b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, State, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied. Where the facility is JCAHO accredited, CONTRACTOR agrees to meet applicable JCAHO standards.

4. CONTRACTOR EXCLUSION FROM FEDERAL PROGRAMS.

CONTRACTOR warrants that it and none of its employees, agents or subcontractors performing services or providing goods pursuant to this Agreement are excluded from participation in federal health care programs, as defined in the Social Security Act (section 1128 and 1128A), and other federal laws and regulations relating to health care. HHSC reserves the right to verify that the above warranty is true and to immediately cancel this Agreement in the event it is violated.

5. **NONDISCRIMINATION.**

No person performing work under this Agreement, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, State, or county law.

6. **CONFLICTS OF INTEREST.**

The CONTRACTOR represents that neither the CONTRACTOR, nor any employees or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

7. **SUBCONTRACTS AND ASSIGNMENTS.**

The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the HHSC and (ii) the CONTRACTOR's assignee or subcontractor submits to the HHSC a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR's assignee or subcontractor have been paid.

8. **INDEMNIFICATION AND DEFENSE.**

The CONTRACTOR shall defend, indemnify, and hold harmless the State, the HHSC, the contracting facility, and their directors, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

9. **COST OF LITIGATION.**

In case the State, the HHSC, the contracting facility, and their directors, officers, employees, and agents shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Agreement, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the State, the HHSC, the contracting facility, and their directors, officers, employees, and agents, including attorneys' fees.

10. **LIQUIDATED DAMAGES.**

When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 11 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the HHSC the amount, if any, set forth in this Agreement per calendar day from the date set for cure until either (i) the HHSC reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR's delay or nonperformance is excused under paragraph 11.d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay.

11. **TERMINATION FOR DEFAULT.**

a. **Default.** If the CONTRACTOR refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, or otherwise fails to timely satisfy the Agreement provisions, or commits any other substantial breach of this Agreement, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods and services.

b. **CONTRACTOR's duties.** Notwithstanding termination of the Agreement and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the State or the HHSC has an interest.

c. **Compensation.** Payment for completed goods and services delivered and accepted by the HHSC shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount. The HHSC may withhold from

amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the HHSC against loss because of outstanding liens or claims and to reimburse the HHSC for the excess costs expected to be incurred by the HHSC in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the HHSC under this Agreement. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 11.d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to such provision.

f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Agreement.

12. TERMINATION FOR CONVENIENCE.

a. Termination. The Agency procurement officer may, when the interests of the HHSC so require, terminate this Agreement in whole or in part, for the convenience of the HHSC. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Agreement terminated and when termination becomes effective.

b. CONTRACTOR's obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR's right, title, and interest under terminated orders or subcontracts to the HHSC. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the HHSC in the manner and to the extent directed by the Agency procurement officer:

(1) Any completed goods or work product; and

(2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Agreement; and

(3) The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the HHSC has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the HHSC has breached the Agreement by exercise of the termination for convenience provision.

d. Compensation.

(1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 12d(3) below.

(2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Agreement price plus settlement costs reduced by payments previously made by the HHSC, the proceeds of any sales of goods and manufacturing materials under subparagraph 11c, and the Agreement price of the performance not terminated.

(3) Absent complete agreement under subparagraph 12d(1) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 12d(1) shall not duplicate payments under this subparagraph for the following:

(A) Contract prices for goods or services accepted under the Agreement;

(B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have been sustained a loss if the entire Agreement would have completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 12.b. These costs must not include costs paid in accordance with subparagraph 12.d.(3)(B);

(D) The reasonable settlement costs of the CONTRACTOR including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Agreement and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Agreement. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Agreement price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 12.d.(1) and the Agreement price of performance not terminated.

13. COST AND EXPENSES.

Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Agreement shall be subject to the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the DIRECTOR is obtained, reimbursement for subsistence allowable (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for State officers and employees in the executive branch who are excluded from collective bargaining coverage.

14. PAYMENT PROCEDURES; FINAL PAYMENT; TAX CLEARANCE.

a. Original invoices required. All payments under this Agreement shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Agreement have been performed by the CONTRACTOR according to the Agreement.

b. Prompt payment.

(1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

(2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

c. Final payment. Final payment under this Agreement shall be subject to section 103-53, HRS, which requires a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State laws against the CONTRACTOR have been paid.

15. FEDERAL FUNDS.

If this Agreement is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Agreement to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds.

16. MODIFICATIONS OF AGREEMENT.

a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement permitted by this Agreement shall be made by written amendment to this Agreement, signed by the CONTRACTOR and the HHSC.

b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision or condition of this Agreement shall be permitted.

17. CONFIDENTIALITY OF MATERIAL.

a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the HHSC.

b. All information, data, or other material provided by the CONTRACTOR to the HHSC shall be subject to the Uniform Information Practices Act, chapter 92F, HRS, as modified by chapter 323F, HRS.

18. CORPORATE COMPLIANCE PROGRAM.

A description of the Corporate Compliance Program of HHSC is posted on the HHSC internet (www.hhsc.org). The CONTRACTOR, by signing this contract, acknowledges that it has read said description, and that the CONTRACTOR knows of the fact and substance of the Corporate Compliance Program, which governs operations at all facilities of the HHSC. The CONTRACTOR understands and agrees that employees, agents, and contractors performing any services at any of the HHSC facilities shall be fully subject to such Corporate Compliance Program, as may be amended from time to time, as well as all federal program requirements and applicable policies and procedures of HHSC and its facilities. The Corporate Compliance Program requires periodic training, including an orientation program, of all people who provide financial, business office, personnel, coding, medical records information systems and clinical services in the facility. The CONTRACTOR agrees to cause its employees, agents, and contractors who provide any services at any financial, business office, personnel, coding, medical records information systems and clinical services at any of the HHSC facilities to participate in the orientation and training programs.

19. BUSINESS ASSOCIATE; PRIVACY AND SECURITY ADDENDUM.

By signing this contract, CONTRACTOR acknowledges that it is a Business Associate of HHSC within the meaning of the federal privacy and security laws as stated in 45 C.F.R. Parts 160 and 164, Subparts A, C, and E. CONTRACTOR further acknowledges that it has read the Privacy and Security Addendum, which is posted on the HHSC internet (www.hhsc.org) and is applicable to all Business Associates. Said Privacy and Security Addendum is hereby incorporated by reference and made a part of this agreement as if fully repeated herein. By signing this contract, CONTRACTOR agrees to fully comply with, and be bound by, all the terms set forth in the Privacy and Security Addendum.

20. PUBLICITY.

The CONTRACTOR shall not refer to the HHSC, or any office, agency, or Officer thereof, or any HHSC employee, including the head of the purchasing agency, the DIRECTOR, the Agency procurement officer, the HHSC Board of Directors, or to the services or goods, or both, provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Agreement shall be referred to the Agency procurement officer.

21. OWNERSHIP RIGHTS AND COPYRIGHT.

The HHSC shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the HHSC upon expiration or termination of this Agreement. The HHSC, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement.

22. LIENS AND WARRANTIES.

Goods provided under this Agreement shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Agreement documents, whichever are greater.

23. ACCESS TO BOOKS AND RECORDS.

If the value or cost of Services rendered to HHSC pursuant to this Agreement is Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, CONTRACTOR agrees as follows:

a. Until the expiration of four (4) years after the furnishing of such services, CONTRACTOR shall, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly-authorized representative, the Comptroller General, or the Comptroller General's duly-authorized representative, such books, documents, and records as may be necessary to certify the nature and extent of the cost of such Services; and

b. If any such Services are performed by way of subcontract with another organization and the value or cost of such subcontracted Services is Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, such subcontract shall contain and CONTRACTOR shall enforce a clause to the same effect as paragraph 23.a. immediately above. The availability of CONTRACTOR's books, documents and records shall be subject at all times to all applicable legal requirements, including without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation. The provisions of paragraphs 23.a. and 23.b. shall survive the expiration or other termination of this Agreement, regardless of the cause of such termination.

24. ANTITRUST CLAIMS.

The HHSC and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to HHSC any and all claims for overcharges as to goods and materials purchased in connection with this Agreement, except as to overcharges which result from violations commencing after the price is established under this Agreement and which are not passed on to the HHSC under an escalation clause.

25. GOVERNING LAW.

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a State court of competent jurisdiction in Honolulu, Hawaii.

26. **COMPLIANCE WITH LAWS.**

The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement.

27. **ENTIRE AGREEMENT.**

This Agreement sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the HHSC and the CONTRACTOR relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the HHSC and the CONTRACTOR other than as set forth or as referred to herein.

28. **SEVERABILITY.**

In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.

29. **WAIVER.**

The failure of the HHSC to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the HHSC's right to enforce the same in accordance with this Agreement. The fact that the HHSC specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of the HHSC's rights or the CONTRACTOR's obligations under the law.